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	First Inventor	BARNES
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	Examiner	Hylton, Robin Annette
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APPEAL FROM THE FINAL REJECTION
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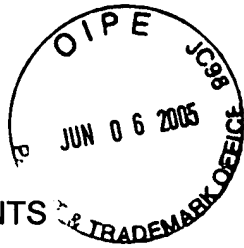


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1. REAL PARTY IN INTEREST

The real party in interest is the recorded assignee, Kraft Foods Holdings, Inc.

2. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences

3. STATUS OF CLAIMS

Claims 1-2, 4-6, 9-11 and 13-19 are rejected and on appeal.

Claims 3 and 8 are objected to as being dependent on a rejected base claim but allowable if rewritten in independent form.

Claims 7 and 12-13 have been canceled.

The art rejections of independent claims 1, 6 and 18 are being appealed.

4. STATUS OF AMENDMENTS

No amendment was filed after the final rejection.

5. SUMMARY OF CLAIMED SUBJECT MATTER

Independent Claim 1

As indicated in independent claim 1, the invention claimed therein is a **dispensing container** (#10, see page 4, lines 3-4) having a **toroidal-shaped body** (#12, see page 4, line 4). This toroidal body 12 has a **hollow interior** (#22, see page 4,

line 12); and a **top surface** (#14, see page 4, line 6) with an **aperture** (#26, see page 4, line 13).

The claimed dispensing container 10 also has a **lid** (#30, see page 4, line 14). This lid 30 includes a **tab portion** (#32, see page 4, line 15) **hinged** (#36, see page 4, line 15) to an **actuator portion** (#34, see page 4, line 15). The lid 30 covers a portion of the top surface (#14, see page 4, lines 6 and 14). The tab portion 32 extends circumferentially a distance less than 90° around the top surface 14 (see page 5, lines 1-5); and tab portion 32 is dimensioned to cover the aperture 26 (see page 5, lines 2-3).

In use, the actuator portion 34 is depressable to cause the tab portion 32 to pivot away from the aperture 26 for gaining access to the hollow interior 22 (see page 4, lines 19-23 and page 5, lines 15-21).

Independent Claim 6

Similar to the above, the invention claimed in independent claim 6 is a **dispensing container** (#10, see page 4, lines 3-4) having a **toroidal-shaped body** (#12, see page 4, line 4). This toroidal body 12 has a **top surface** (#14, see page 4, line 6), a **bottom surface** (#16, see page 4, line 6), an opposing **outer sidewall** (#18, see page 4, line 6), and an **inner sidewall** (#20, see page 4, lines 5-6). Together the elements of toroidal body 12 define a **hollow interior** (#22, see page 4, line 12) with a **central void** (#24, see page 4, line 12). It will also be appreciated that top surface 14 of toroidal body 10 also has an **aperture** (#26, see page 4, line 13).

The claimed dispensing container 10 also has a **lid** (#30, see page 4, line 14). This lid 30 includes a **tab portion** (#32, see page 4, line 15) **hinged** (#36, see page 4,

line 15) to an **actuator portion** (#34, see page 4, line 15). The lid 30 covers a portion of the top surface (#14, see page 4, lines 6 and 14). The tab portion 32 extends circumferentially a distance less than 180° around the top surface 14 (see page 5, lines 1-5); and tab portion 32 is dimensioned to cover the aperture 26 (see page 5, lines 2-3) and terminate at substantially the edge of the aperture 26 (see page 5, lines 2-3).

In use, the actuator portion 34 is depressable to cause the tab portion 32 to pivot away from the aperture 26 for gaining access to the hollow interior 22 (see page 4, lines 19-23 and page 5, lines 15-21).

Independent Claim 18

Similar to the above, the invention claimed in independent claim 18 is a **dispensing container** (#10, see page 4, lines 3-4) in the shape of a **toroid** (body #12, see page 4, line 4). This toroid 12 has a **hollow interior** (#22, see page 4, line 12) with an **aperture** (#26, see page 4, line 13) in the **top** (surface #14, see page 4, line 6) from which the contents are dispensed (see page 4, lines 22-23).

The container 10 also includes a **tab portion** (#32, see page 4, line 15) extending less than 180° around the top of the container (see page 5, lines 1-5). The tab portion 32 is hingedly connected to the container by a **single hinge** (#36, see page 4, line 15) to selectively cover and uncover the aperture 26 (see page 4, lines 19-23 and page 5, lines 15-21).

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Ground A. Whether the examiner erred in rejecting independent claims 1, 6 and 18 as being unpatentable under 35 U.S.C. § 103(a) over Polo in view of Pettersen.

Ground B. Whether the examiner erred in rejecting independent claim 18 as being unpatentable under 35 U.S.C. § 103(a) over Chen.

7. ARGUMENT

Ground A.

Independent claims 1, 6, and 18 were rejected under 35 U.S.C. § 103 as being unpatentable over Polo in view of Pettersen. The Examiner alleges that Polo teaches the claimed container except for a tab extending less than 90° or 180° around the top surface of the container. The Examiner attempts to make up the deficiencies of Polo by alleging that Pettersen teaches that it is known to provide a hinged tab having a depressable actuator on a container where the tab extends less than 180° and less than 90° around the container body.

Contrary to the Examiner's allegation, the present dispenser is not obvious from Polo in view of Pettersen. The individual and, *arguendo*, combined teaching of Polo in view of Pettersen fails to teach or suggest all claimed elements. Moreover, it is inappropriate to combine the teachings of Polo with Pettersen as there fails to be any

teaching or suggestion to motivate one of ordinary skill in the art to combine the two references with one another to make the claimed invention obvious.

The *arguendo* combined teachings of Polo and Pettersen fail to teach or suggest the claimed dispenser which recites, in part, a toroidal-shaped body having a tab portion which extends circumferentially around a distance less than 90° (claim 1) or less than 180° (claims 6 and 18). On the contrary, neither Polo nor Pettersen teaches or suggests a tab which extends circumferentially less than 180°. Polo clearly teaches a tab which extends 180°. Pettersen clearly teaches a tab which extends radially across the top of a cylindrical container bottle. Pettersen fails to teach or suggest a tab which extends circumferentially let alone circumferentially less than 90° or even 180°.

Moreover, there fails to be any teaching or suggestion in Polo or Pettersen to motivate one of ordinary skill in the art to modify the Polo tab which extends circumferentially 180° around a top surface of the Polo toroidal-shaped body to use the radially extending tab of Pettersen.

Furthermore, even if one were to combine the teaching of Polo with Pettersen, Pettersen fails to teach or suggest how one of ordinary skill in the art would fashion a radially extending tab which extends radially across the top surface of a cylindrically-shaped bottle or container to form a circumferentially extending tab as claimed. On the contrary, if one were to combine the teaching of Pettersen with Polo as alleged, one would have a radially extending tab traversing the diameter of a toroidal-shaped body and thus not form the claimed toroidal-shaped body with a tab which extends circumferentially less than 180° around a top surface of the body.

Based on the foregoing arguments, Applicant respectfully requests that the rejection made by the Examiner of independent claims 1, 6, and 18 under 35 U.S.C. § 103(a) as being unpatentable over Polo in view of Pettersen be withdrawn and claims 1, 6 and 18 be acknowledged as patentable over these references.

Ground B.

Independent claim 18 was also rejected under 35 U.S.C. § 103(a) as being unpatentable over Chen. The Examiner alleges that Chen teaches a container having an outer wall and an inner wall forming a hollow body and a tab which uncovers an aperture in the hollow body. The Examiner does admit that Chen is not a true toroidal-shaped body, but the Examiner alleges that it would have been obvious to modify the shape to form the claimed toroidal-shaped body.

Contrary to the Examiner's allegation, claim 18 is not obvious in view of Chen as Chen fails to teach or suggest the claimed toroidal container having a tab which extends less than 180° around the top of the container. Chen fails to teach or suggest a tab portion which extends around the top of the container less than 180°. Chen clearly teaches tabs which are hinged to an outer circumference portion of a heptagon-shaped toolbox. The tabs then extend radially inward towards the center of the toolbox. In fact, the difference between the heptagon-shaped toolbox of Chen and the toroidal-shaped body of the present invention is not merely a matter of design, but in fact goes to an important structural difference. In the present invention the circular outer periphery of a toroid cannot have a straight line hinge which is why in the present invention, the hinge itself extends in a radial direction. Chen, by placing the hinges around the periphery,

necessarily forms an outer periphery with a series of straight lines, which necessarily results in a pentagon; and there is no suggestion, without totally reconstructing Chen using the features of the present invention, to convert Chen to a toroidal-shaped body. Chen therefore fails to teach or suggest the present invention.

Moreover, since Chen is a design patent which is limited to its ornamental design, the breadth of the disclosure is construed narrowly to that ornamental design. Therefore, it would not be obvious to modify the heptagonal-shaped toolbox to form a toroid shape as was alleged.

And while the Examiner acknowledges that rounded, smooth shaped containers exist in the art (as by Polo), for reasons explained above, there fails to be any teaching, suggestion or motivation for one of ordinary skill in the art to modify Chen to form a toroid-shaped body. Absent such motivation, it is inappropriate to apply Chen to reject claim 18 under 35 U.S.C. § 103(a).

Based on the foregoing arguments, Applicant respectfully requests that the rejection made by the Examiner of independent claim 18 under 35 U.S.C. § 103(a) as being unpatentable over Chen be withdrawn and claim 18 be acknowledged as patentable over this reference.

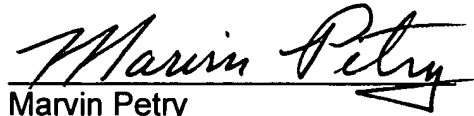
Conclusion.

For the foregoing reasons, it is submitted that independent claims 1, 6 and 18 all set forth a patentable invention with respect to the cited references. Therefore, the examiner should be reversed with respect to the rejections of the these independent

claims; as well as all remaining claims which are dependent from one of these independent claims.

Respectfully submitted,

STITES & HARBISON PLLC

A handwritten signature in black ink, reading "Marvin Petry". The signature is written in a cursive style with a horizontal line underneath the name.

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June 6, 2005

8. CLAIMS APPENDIX

1. A dispensing container comprising:

a toroidal-shaped body having a hollow interior and having a top surface with an aperture; and

a lid having a tab portion hinged to an actuator portion and covering a portion of said top surface, said tab portion extending circumferentially a distance less than 90° around said top surface and dimensioned to cover said aperture, said actuator portion being depressable to cause said tab portion to pivot away from said aperture for gaining access to said hollow interior.

2. The container of claim 1, wherein said tab portion extends circumferentially a distance terminating at substantially the edge of said aperture.

3. The container of claim 1, wherein said actuator portion is offset below a lid top surface.

4. The container of claim 1, wherein the outer surfaces of said top and bottom surfaces are concave.

5. The container of claim 1, wherein said tab portion comprises a tab bottom portion abutting an engaging surface of said top surface, whereby said tab bottom portion

pivotally pivots about said engaging surface when said actuator portion is depressed, thereby causing said tab portion to pivot away from said aperture.

6. A dispensing container comprising:

a toroidal-shaped body having a top surface, a bottom surface, and opposing outer and inner sidewalls defining a hollow interior with a central void, said top surface having an aperture; and

a lid having a tab portion hinged to an actuator portion and covering a portion of said top surface, said tab portion extending circumferentially a distance less than 180° around said top surface and dimensioned to cover said aperture and terminating at substantially the edge of said aperture, said actuator portion being depressable to cause said tab portion to pivot away from said aperture for gaining access to said hollow interior.

8. The container of claim 6, wherein said actuator portion is offset below a lid top surface.

9. The container of claim 6, wherein said bottom surface, a portion said top surface and a lid top surface are concave.

10. The container of claim 6, wherein said opposing outer and inner sidewalls are cylindrical and coaxial.

11. The container of claim 6, wherein said tab portion comprises a tab bottom portion abutting an engaging surface of said top surface, whereby said tab bottom portion pivotally pivots along said engaging surface when said actuator portion is depressed, thereby causing said tab portion pivot away from said aperture.

14. A dispenser container according to claim 18, wherein the tab portion is hinged to a tab actuator portion which in turn is hinged to the container at a location on the upper outer edge of the toroid, and the tab portion is shaped to overlie a portion of the top of the toroid.

15. A dispenser container according to claim 14, wherein the toroid comprises cylindrical outer and inner side walls and concave top and bottom surfaces, the actuator portion being hingedly attached at the juncture of the top surface and an outer side wall, and the actuator portion and the tab portion are concavity shaped to match the concave shape of the top surface.

16. A dispenser container according to claim 18, wherein the toroid comprises cylindrical outer and inner side walls.

17. A dispenser container according to claim 16, including concave top and bottom surfaces.

18. A dispenser container in the shape of a toroid having a hollow interior and an aperture in the top thereof to dispense the contents thereof, a tab portion extending less than 180° around the top of the container and hingedly connected to the container by a single hinge to selectively cover and uncover said aperture.

19. A dispenser container according to claim 18, wherein the tab portion extends less than 90° around the top of the container and is hingedly connected to the container by a single hinge to selectively cover and uncover said aperture.

9. EVIDENCE APPENDIX

none

10. RELATED PROCEEDINGS APPENDIX

none